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BLACKLISTING

GROVER G. HUEBNER

COMPARATIVE LEGISLATION BULLETIN—NO 10—NOVEMBER, 1906

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DEFINITIONS

Ohio. A "blacklist" is defined to be a list of persons marked out for special avoidance, antagonism, and enmity on the part of those who prepare the list or those among whom it is intended to circulate; but it is most usually resorted to by combined employers who exchange lists of their employees who go on strikes, with the agreement that none of them will employ the workmen whose names are on the lists. *Mattison v. Lake Shore & M. S. Ry. Co.* 1895, 3 Ohio Dec. 526.

Texas. Acts, 1901, c. 99, sec. 4. "He is guilty of blacklisting who places, or causes to be placed, the name of any discharged employee, or any employee who has voluntarily left the service of any individual, firm, company, or corporation on any book or list or publishes it in any newspaper, periodical, letter or circular, with the intent to prevent said employee from securing employment of any kind with any other person, firm, corporation or company, either in a public or private capacity."

FORMS OF BLACKLISTING

Blacklist

This is the blacklist above defined, and is the practice legally known as "blacklisting."

Clearance card

This is a written statement given to employees upon leaving employment and is sometimes used as a means of blacklisting. The instrument, as such, is not recognized as blacklisting by the courts.

Whitelist

This term refers to the practice of having employer's associations register the employees of all the members and secure a history of each one. The history is sent to the members when they desire to hire additional employees. It is sometimes known as the "negative blacklist."

LAWS AND JUDICIAL DECISIONS

Foreign countries

England. Conspiracy & Protection of Property Act. 38 and 39 Vic. c. 86. The common law is so modified that a combination to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen is not indictable as a conspiracy if such act when committed by one person is not a crime punishable by imprisonment. Courts have held that this does not prevent punishment as a civil conspiracy (*Quinn v. Leatham*, 1901, 17 T. L. R. 749) With this modification, England follows the common law in dealing with blacklists.

Appeal dismissed because there was no other motive than self interest. *Jenkinson v. Neild*, 1892, 8 T. L. R. 540.

Damages granted because the purpose was to injure. Injunction made permanent. *Trollope v. London Bld'g Trades Fed.* 1895, 72 L. T. 342.

The legality of the blacklist depends upon its motive. *Quinn v. Leatham*, 1901, 17 T. L. R. 749; *Bullock v. St. Anne's Master Builders*, 1902, 19 T. L. R. 27.

France. In 1889 the obligatory features of the certificate of employment were suppressed. By art. 3, Laws, 1889, all persons, with the exception of those

in a few industries, may, at the end of their services, exact a certificate containing exclusively the date of their coming and going and the kind of work at which they have been employed.

*Germany.*¹ In Germany both the courts and statute law declare blacklisting illegal. Upon cessation of employment the employer is required to give the workman a certificate of dismissal. There is a heavy penalty against placing any signs or marks on the certificates which convey knowledge not therein expressed.

United States

Comp. St. 1901. Every employer engaged in interstate or foreign transportation, except masters of vessels as defined in sec. 4612 Rev. St. of U. S. "who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than \$100 and not more than \$1,000."

Alabama. Code, 1897, c. 192, sec. 5511. Statute prohibiting interference with employment.

Acts, 1903, no. 329, sec. 5. It is unlawful for any person, firm or corporation to maintain a "blacklist"

¹ Authority of the consul of Germany at Philadelphia, Oct., 1906. Also see U. S. Ind. Com. Rpt. vol. 16, p. 171.

or to notify any other firm or corporation that any person is blacklisted, or to use any similar means to prevent employment. Fine not less than \$50 nor more than \$500, or imprisonment not over sixty days.

*Arizona.*³

*Arkansas.*⁴

*California.*⁵

*Colorado.*⁶ Acts, 1905, c. 79, sec. 4. It is a misdemeanor for any employer to maintain a "blacklist" or notify other employers that any workman is blacklisted in order to prevent his employment. It is not unlawful to make a true statement upon application of the employee or the prospective employer. It is not unlawful to maintain or publish a list as to persons' financial standing. Penalty is fine not less than \$10 nor more than \$250, or imprisonment not longer than sixty days, or both.

*Connecticut.*⁷ Gen. St. 1902, sec. 1299. "Every employer who 'blacklists' an employee with the intent to prevent him from procuring other employment is to be fined not more than \$200"

*Delaware.*⁸

Florida. Acts, 1893, c. 4144, sec. 1. General statute prohibiting conspiracy against workingmen, to prevent employment.

Acts, 1893, c. 4207, sec. 1-5. No railroad company or other corporation or any person, agent or employee of such corporation is to prevent the employment of a

³ No statute against blacklisting.

⁴ See statute against *False charges*, p. 20

⁵ See *Protection of unions*, p. 20

⁶ See *Protection of unions*, p. 20

⁷ See *Protection of unions*, p. 20

⁸ No statute against blacklisting.

discharged employee, by any work, writing, sign or other means. Fine not less than \$100 nor more than \$500; and damages are also to be granted. A truthful statement may be made. If a truthful statement of the cause of discharge is not furnished within ten days upon request of the discharged employee, then no such statement can be made thereafter. A company having received a "blacklist" is to furnish the same to the employee upon request. The law is to apply to railroad companies or corporations under the same general management or contract, but having separate divisions.

Georgia. Code, 1895, sec. 119. Statute prohibiting organization to prevent the employment of any person.

Code, 1895, sec. 124. Conspiracy to prevent employment is a misdemeanor.

Code, 1895, sec. 1873. Blacklisting is prohibited in name, in case of corporations, or agents or employees thereof. A truthful statement of cause of discharge is to be furnished upon request.

An act to require certain corporations to give to their discharged employees or agents the cause of removal or discharge is unconstitutional. *Wallace v. Ga. N. Ry. Co.* 1894, 22 S. E. 579.

A blacklist is declared unlawful when a false report is circulated. *Willis v. Muscagee Co.* 1904, 48 S. E. 177.

*Idaho.*⁹

Illinois. Rev. St. 1905, c. 38, sec. 46. If any two or more persons conspire together, or the officers or executive committee of any society, organization or corporation issue or utter any circular or edict as the

⁹ See *Protection of unions*, p. 20

action or instruction to its members, or any other persons, societies, organizations or corporations for the purpose of establishing a so-called boycott or blacklist, or distribute any written or printed notice, with the fraudulent or malicious intent wrongfully and wickedly to injure the person, character, business, employment or property of another...they are guilty of a conspiracy. Penalty is imprisonment in the penitentiary not exceeding five years or fine not exceeding \$2,000, or both.

The instruments of railroads known as "clearance cards" are not illegal. *McDonald v. I. C. R. Co.* 1900, 58 N. E. 463.

Indiana. Ann. St. 1901, sec. 7076. Prevention of employment is unlawful.

sec.7077. It is unlawful for any railroad company or other company, partnership or corporation, to "blacklist" discharged employees, or by work, writing or other means to prevent employment of any employee. Compensatory and exemplary damages are to be granted. If the employer does not furnish a true statement upon request of the employee, no such statement can be made thereafter at any time.

This statute applies only to discharged employees. The section relative to employees voluntarily leaving employment is unconstitutional, as it is not expressed in the title of the act. *Wabash R. Co. v. Young*, 1904, 69 N. E. 1003.

Iowa. Code, 1897, Supp. 1902, sec. 5027-28. No person, agent, company or corporation can by word or writing prevent discharged employees from securing employment. Truthful statement may be furnished upon request. Penalty is fine not less than \$100 nor more than \$500. Damages are granted. In case of agents of any railroad company, partnership or cor-

poration, treble damages are granted if the employee is prevented from obtaining employment.

*Kansas.*¹⁰ Gen. st. 1905, sec. 4026-30. No employer may by word, sign or writing of any kind whatsoever attempt to prevent the employment of a discharged employee. A true statement of the cause of discharge is, however, to be furnished upon request of the employee. Penalty is fine of \$100 for each offense and thirty days imprisonment. Damages equal to three times the sum of the injury and reasonable attorney's fees are granted in addition.

Kentucky.

Railroads are liable to discharged employees for false entry upon records when such records are in any way communicated to other railroads, and the employees have thereby been prevented from obtaining employment. There must be an overt act. *Hundly v. Louisville & N. R. Co.* 1898, 48 N. W. 429.

Blacklisting does not make a person liable unless there is coercion or deception. *Baker v. Sun Life Insurance Co.* 1901, 64 S. W. 967.

*Louisiana.*¹¹

Maine. Rev. St. 1903, c. 127, sec. 21. Any employer, employee, or other person, who by threats of injury, intimidation or force, alone or in combination with others, prevents any person from entering into, continuing in or leaving the employment of any person, firm or corporation, is to be punished by imprisonment for not more than two years, or by fine not exceeding \$500.

*Maryland.*¹²

¹⁰ See *Protection of unions*, p. 20

¹¹ No statutes against blacklisting.

¹² No statutes against blacklisting.

*Massachusetts.*¹³

Employer sent names of strikers to other like corporations and an agreement was made not to employ them unless they returned to the defendant at his wages. Held entitled to relief in equity. *Worthington v. Waring*, 1892, 34 Am. St. R. 294.

Michigan. Comp. Laws, 1897, c. 315, sec. 11343. General statute against intimidation, providing that no person shall in any way, without legal authority, molest any workman in the quiet and peaceful pursuit of his lawful avocation.

*Minnesota.*¹⁴ Gen. Laws, 1905, sec. 5097. It is a misdemeanor for two or more corporations or employers to agree to combine or confer together to prevent a man's employment by circulating blacklists or by any means. Unlawful for a corporation or company, or agent or employee thereof to blacklist discharged employees, or by word or writing hinder an employee from obtaining employment who has voluntarily left service. (Act was enacted in 1895, c. 174, sec. 1-6)

This act is constitutional. *State ex rel. Schaffer v. Justus*, 1902, 88 N. W. 759.

Mississippi. Ann. Code, 1892; sec. 1006, no. 5. General statute against interference with employment and conspiracy against workmen. Application to blacklisting is doubtful.

*Missouri.*¹⁵ Rev. St. 1899, sec. 2166. Every person who sends, delivers, makes, or causes to be made, sent or delivered, or who parts with any paper, letter, or writing, signed or unsigned, or publishes a false statement, to prevent the employment of a person, or

¹³ See *Protection of unions*, p. 20

¹⁴ See *Protection of unions*, p. 20

¹⁵ See *False charges*, p. 20

who "blacklists" a person in any way to prevent employment or to cause discharge, is guilty of a misdemeanor. Fine not over \$1,000 or imprisonment, or both.

Montana. Ann. Code, 1895, sec. 3390-92. "Blacklisting" is a penal offense and punishable as such. Damages are granted. A truthful statement is not prohibited. If such statement is not furnished upon request of the employee, it cannot be furnished thereafter to any person.

Pen. Code, sec. 656. Violation of the above statute is a misdemeanor.

Nebraska.

A blacklist is a conspiracy and includes an abstract of delinquent debtors sent by a commercial association to other merchants branding the debtors as unworthy of credit. Damages are granted. *Master v. Lee*, 1896, 39 Neb. 574.

*Nevada.*¹⁶ Comp. Laws, 1900, sec. 4982. Any person, association, company, or corporation or agent, preventing any employee from getting employment is guilty of a misdemeanor.

Acts, 1905, c. 150, sec. 1-3. Any corporation, association, company, or individual who "blacklists," or publishes or causes to be blacklisted any discharged employee with intent to prevent his employment, is guilty of a misdemeanor. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both. A truthful statement is permitted on application. Such statement cannot be used as cause for a libel suit.

New Hampshire. Rev. St. and Sess. Laws, 1901,

¹⁶ See *Protection of unions*, p. 20

c. 266, sec. 12. General statute against intimidation of employees and interference with workmen.

*New Jersey.*¹⁷

*New Mexico.*¹⁸

*New York.*¹⁹

A manufacturer in contract with wholesale dealers of medicines to handle their goods at uniform prices supplied the dealers with a list of those who cut prices. This is not unlawful. *Park & Sons Co. v. N. W. D. A.* 96 Am. St. Rep. 578.

*North Carolina.*²⁰

North Dakota. Const. art. 1, sec. 23. Any malicious interference with the obtaining of employment is a misdemeanor.

art. 17, sec. 212. "The exchange of blacklists between corporations shall be prohibited.

Rev. Code, 1899, sec. 7041-2. It is a misdemeanor for any person, corporation or agent thereof to maliciously interfere with the obtaining or holding of employment. It is a misdemeanor to exchange or furnish a "blacklist."

*Ohio.*²¹ Ann. St. 5th ed. pt. 2, Civ. Code, sec. 3365-20. Railroads are to furnish discharged employees with a written statement of the cause of the discharge..

Failure to furnish such statement does not make the company liable. *Crall v. Toll. & O. C. Ry. Co.* 1893, 7 C. C. 132.

Damages are granted in case of a combination between railroads to maliciously prevent employment. *Mattison v. Lake Shore & M. S. R. Co.* 1895, 3 Ohio, Dec. 526.

¹⁷ See *Protection of unions*, p. 20

¹⁸ No statute against blacklisting.

¹⁹ See *Protection of unions*, p. 20

²⁰ No statute against blacklisting.

²¹ See *Protection of unions*, p. 20

Oklahoma. Rev. Ann. St. 1903, sec. 2658-9. It is a misdemeanor for any company, corporation or individual to "blacklist," or require a letter of relinquishment from any employee, with the intent to prevent his further employment. Fine not less than \$100 nor more than \$500. Damages are to be granted.

*Oregon.*²² Acts, 1903, p. 137, sec. 1. It is a misdemeanor for any corporation, company or individual to "blacklist" or publish any blacklist to prevent the employment of a discharged employee. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both.

*Pennsylvania.*²³

*Porto Rico.*²⁴

Rhode Island. Gen. Laws, 1896, c. 279, sec. 45. General statute against interference with lawful employment.

South Carolina.

Employees could not collect, as they were receiving wages from their union while on strike. *Bradley v. Pierson*, 1892, 24 At. R. 65.

South Dakota. Rev. St. 1903, Pen. Code, sec. 758. Statute against interference with employment which may be interpreted to cover blacklisting.

*Tennessee.*²⁵

Texas. Acts, 1901, c. 99, sec. 1-4. It is a misdemeanor for any corporation, company, or individual to "blacklist" or cause to be blacklisted any discharged employee, with the intent of preventing his obtaining em-

²² See *Protection of unions*, p. 20

²³ See *Protection of unions*, p. 20

²⁴ See *Protection of unions*, p. 20

²⁵ No statute against blacklisting.

ployment. Fine not less than \$50 nor more than \$250, or imprisonment not less than thirty nor more than ninety days, or both. True statement may be made upon application of the employee or prospective employer.²⁶

Utah. Const. art. 12, sec. 19. Any malicious interference with employment of any employee is a crime.

Rev. St. 1898, sec. 1340-41. Any company, corporation or individual who "blacklists" or causes to be blacklisted any employee to prevent his employment is guilty of a felony. Fine not less than \$500 nor more than \$1,000 and imprisonment in state prison not less than sixty days nor more than one year.

*Vermont.*²⁷

Virginia. Code, 1904, sec. 3657c. It is a misdemeanor for any corporation, manufacturer, manufacturing company, or agent thereof, to maliciously and willfully prevent, or attempt to prevent by word or writing, directly or indirectly, the employment of a discharged employee. Fine not less than \$100 nor more than \$500. A truthful statement may be made upon application.

Washington. Code, 1902, sec. 5992. "Blacklisting" is prohibited in terms. It is a misdemeanor and is punishable by fine of not less than \$100 nor more than \$1,000, or imprisonment for not less than ninety days nor more than one year, or both.

*West Virginia.*²⁸

*Wisconsin.*²⁹ Rev. St. 1898, c. 182, sec. 4466b.

²⁶ See p. 16 for definition in Texas Law.

²⁷ No statute against blacklisting.

²⁸ No statute against blacklisting.

²⁹ See *Protection of unions*, p. 20

"Any two or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same, or for the purpose of procuring or causing the discharge of any employee by threats, promises, circulating blacklists or causing the same to be circulated, or who shall, after having discharged any employee, prevent or attempt to prevent such employee from obtaining employment with any other person, partnership, company or corporation by the means of the aforesaid, or shall authorize, permit or allow any of his or their agents to blacklist any discharged employee or any employee who has voluntarily left the service of his employer, or circulate a blacklist of such employee to prevent his obtaining employment under any other employer, or shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by a fine of not more than \$500 nor less than \$100, which fine shall be paid into the state treasury for the benefit of the school fund." Truthful statement may be made upon application of the employee, the prospective employer or any bondsman or surety. Such information cannot be given with intent to blacklist or prevent employment. An employer may keep a record for his own information.

*Wyoming.*³⁰

³⁰ No statute against blacklisting.

SUMMARY

LEGALITY

Though there are more statutes directly aimed at blacklisting than at boycotting, the courts do not recognize the illegality of blacklisting as clearly. In the absence of special statutes, the common law doctrine of malicious and willful intent to do injury may be applied. Wherever there is a conspiracy, the common law of civil conspiracy may be applied as it is in England,³¹ or even extended so as to demand punishment as a criminal conspiracy. American courts do not, however, uniformly adopt this rule. Especially is this true in the case of railroad clearance cards. Courts have held them to be a lawful instrument.

McDonald v. Ill. C. R. Co. 58 N. E. 463; *C. C. C. & St. L. Ry. Co. v. Jenkins*, 1898, 174 Ill. 398.

The legality of the "whitelist" has not been determined.

³¹ See p. 6.

REMEDIES

Protection of unions³²

Seventeen states and territories and the federal government have statutes prohibiting the exaction from workmen of agreements that they will not be members of unions. These statutes strike at one of the important causes of blacklisting:

Compare the laws of:

- Cal. Pen. Code, 1903, sec. 679.
- Col. Acts, 1897, c. 50, sec. 1-2.
- Conn. Gen. St. 1902, c. 82, sec. 1297.
- Idaho Codes, 1901, sec. 4858-9.
- Ill. Rev. St. 1905, c. 38, sec. 46.
- Ind. Ann. St. 1901, sec. 2302.
- Kan. Gen. St. 1905, sec. 4039.³³
- Mass. Rev. Laws, 1902, c. 106, sec. 12.
- Minn. Rev. Laws, 1905, sec. 5097.
- Nev. Acts, 1903, c. 111, sec. 1-2.
- N. J. Gen. St., 1895, p. 1905, sec. 45-47.
- N. Y. Parker's Crim. & Pen. Code, sec. 171a.
- Ohio Ann. St. pt. 2, Civ. Code, sec. 3364-68.
- Ore. Acts, 1903, c. 137, sec. 1.
- Pa. Dig. 1893-1903, p. 851, sec. 5.
- P. R. St. & Code, 1902, sec. 553.
- Wis. Rev. St. 1898, c. 182, sec. 4466.³⁴
- U. S. Comp. St. 1901, Title, 56c, sec. 10.

False charges

Arkansas and Missouri have statutes prohibiting the making of false charges against railroad employees.

Ark. Dig. 1904, sec. 6655. Mo. Rev. St. 1899, sec. 2165.

³² These laws are difficult to enforce and sometimes declared unconstitutional. The Mo. law was declared unconstitutional in *State v. Julow*, 1895, 29 Lawyers Rep. Ann. 257.

Laws of a similar nature are those preventing discharge or hindrance in employment because of having engaged in a strike. Minn. St. 1905, sec. 1822.

³³ Unconstitutional. *Brick & Title Co. v. Perry*, 1904, 76 P. 848.

³⁴ Unconstitutional. *State v. Kreutzberg*, 1902, 90 N. W. 1098.

Interference with employment

Eight states have general statutes against interference with employment, which may be interpreted to prohibit blacklisting.

See Ala., Ga., Ind., Maine, Mass., N. H., R. I., and S. D.

Florida and Mississippi have statutes of this nature prohibiting conspiracy against workmen.

Truthful statement furnished

Though without a blacklisting law, Ohio provides that, upon application, railroads must furnish a truthful statement of the cause of the discharge to the employee.

Prohibition of blacklisting in name³⁵

Twenty-one states and territories have enacted statutes, prohibiting blacklisting as such under the term blacklisting.

See Ala., Col., Conn., Fla., Ga., Ill., Ind., Iowa, Kan., Minn., Mo., Mont., Nev., N. D., Okla., Ore., Tex., Utah, Va., Wash. and Wis.

Of these, fourteen extend the statutes to cover "any person" guilty of blacklisting.

See Ala., Col., Conn., Kan., Mo., Mont., Nev., Iowa, Okla.,³⁶ Va., Ore., Tex., Utah, and Wash.

Two statutes apply only to two or more persons blacklisting.

See Ill., Wis.

Five apply to railroads and other corporations.

See Ind.³⁷, Fla., Ga., N. D., Minn.³⁸

³⁵ For Federal law see p. 8

³⁶ Corporations, manufacturers, manufacturing cos. or agent or attorney thereof.

³⁷ Railroads, companies, partnerships or corporations.

³⁸ Corporations or companies or agent or employee thereof. The general statute applies to two or more corporations or employers.

Ten of these statutes prohibit the blacklisting of discharged employees.

See Fla., Ga., Ind.,³⁹ Iowa, Kan., Mont., Ore., Nev., Tex. and Va.

Eleven of them apply to any employee.

See Ala., Col., Conn., Ill., Minn., Mo., N. D., Okla., Utah., Wash., Wis.

Nine⁴⁰ permit the making of truthful statements upon application of the proper parties.

See Col., Fla., Ind., Iowa, Kan., Mont., Nev., Tex., and Wis.

³⁹ Provision applying to employees voluntarily leaving is unconstitutional.

⁴⁰ In Georgia this was compulsory but was declared unconstitutional. *Wallace v. Georgia N. Ry. Co.* 1894, 22 S. E. 579.

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